



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PTR DEVELOPMENT HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S MNDL-S MNRL-S FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and damage or compensation pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord's property manager and agent ("the landlord") appeared at the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenants did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional twenty minutes to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code for the tenants had been provided.

The landlord testified the tenants were served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on April 15, 2018. Further to section 90, the registered mail is deemed received by the tenants five days later on April 20, 2018. In support of service, the landlord provided the Canada Post tracking number referenced on the first page of the decision. Pursuant to sections 89 and 90, I find the tenants were served with the Notice of Hearing and Application for Dispute Resolution on April 20, 2018.

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the landlord's testimony, not all details of the submissions and arguments are reproduced here. The relevant aspects of this matter and my findings are set out below.

The landlord testified the fixed term tenancy began on August 24, 2017 with an end date of August 31, 2018.

The tenants provided notice to the landlord of their intention to move out on February 28, 2018 and vacated the unit on March 31, 2018, prior to the end of the fixed term.

The rent was \$1,495.00 monthly payable on the first of the month. A copy of the tenancy agreement was submitted as evidence.

This tenancy agreement contained a clause (paragraph # 4) which stated the tenants agreed to a \$1,495.00 liquidated damages payment if the tenants breached a material term of the tenancy agreement or if the tenants ended the tenancy by vacating before the end of any fixed term.

The landlord testified that upon receiving the tenants' notice, she immediately began advertising the unit for rent. The landlord submitted copies of many advertisements which appeared in March 2018 in newspapers and websites. She also submitted copies of the several invoices for advertising, one of which related to placement of an ad for the unit in multiple newspapers \$756.00.

As a result of her advertising efforts, the landlord explained that she was able to rent the premises on April 1, 2018 for the same rent as that paid by the tenants; the landlord submitted a copy of the new tenancy agreement as evidence.

The landlord testified that one of the tenants, the tenant EI, and the landlord conducted a condition inspection on moving in; both signed a condition inspection report dated August 21, 2017.

The landlord testified the tenant EI and the landlord similarly conducted a condition inspection on moving out; both signed the condition inspection report dated March 31, 2017.

The landlord submitted a signed copy of the condition inspection report on moving in and moving as evidence.

At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$897.50. The deposit was held by the landlord. The tenant EI provided written authorization to the landlord in the condition inspection report on moving out to retain the deposit. The security deposit has not been returned to the tenants.

At the beginning of the tenancy, the tenants also provided a deposit of \$150.00 pertaining to two sets of keys/fobs ("keys/fob deposit"). The tenants returned only one set of keys/fobs to the landlord and the landlord seeks to retain \$75.00 of the keys/fob deposit. The tenant EI provided written authorization to the landlord in the condition inspection report on moving out for the landlord to retain \$75.00 of the keys/fob deposit. The keys/fob deposit has not been returned to the tenants.

The landlord submitted a ledger showing the amount owed by the tenants for rent was \$772.50.

In the moving out report, the tenant EI and the landlord agreed the amount the tenants owed for liquidated damages was one month's rent. They also agree the estimated cleaning costs were \$455.00.

The tenant EI acknowledged in the condition inspection report that the tenants owed the landlord \$2,797.50 and agreed to the deduction of the deposits of \$897.50, leaving a balance owed of **\$1,900.00**. The calculation in the report to which the tenant EI agreed is summarized as follows:

ITEM	AMOUNT
<i>Owed by the tenants – as agreed to by tenant EI</i>	
Unpaid rent (balance owed for March 2018)	\$772.50
Liquidated damages	\$1495.00

Cleaning - estimate	\$455.00
Key/fob replacement	\$75.00
SUB TOTAL	\$2797.50
Less security deposit	(\$747.50)
Less key/fob deposit	(\$150.00)
BALANCE TENANTS ACKNOWLEDGE OWING	\$1900.00

However, the landlord testified that the landlord's claim was later updated to reflect a reduction in the claims for liquidated damages and the cost of cleaning. It is in these updated amounts that the landlord requests a monetary order.

The landlord explained that the final claim for liquidated damages was for half a month's rent, \$747.50. She testified that the unit was rented April 1, 2018, right after the tenants vacated and following the signing of the condition inspection report. Accordingly, the landlord reduced the amount of the claim under this heading as appropriate in the circumstances.

As well, the landlord testified that cleaning costs were not as high as anticipated at the time the condition inspection report on moving out was signed. The landlord submitted an invoice from a cleaning company for \$283.50. Accordingly, the landlord reduced the amount of the cleaning costs claimed under this heading.

The landlord therefore requested a monetary order in the amount of the updated list of claimed expenses totaling \$1,878.50 calculated as follows:

ITEM	AMOUNT
Outstanding rent (half of the rent owing for March 2018)	\$772.50
Liquidated damages (one-half month's rent)	\$747.50
Cleaning	\$283.50
Fob/Key replacement	\$75.00
TOTAL	\$1878.50

The landlord requests authorization to apply the deposits in the amount of \$897.50 to the monetary award, as agreed by the tenant EI in the condition inspection report on moving out.

The landlord now claims a monetary order in the amount of the balance, being **\$981.00** calculated as follows:

ITEM	AMOUNT
Amount owed by tenants (calculation above)	\$1,878.50
(Less deposits) (calculation above)	(\$897.50)
TOTAL	\$981.00

In summary, the landlord claims a monetary order against the tenants in the amount of \$981.00.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Outstanding Rent

A tenant may only end a fixed term tenancy agreement in a limited and specific circumstances as provided under section 45 (2) and (3) of the *Act*, which are situations where a tenant is fleeing domestic violence or going into a care home; or where the landlord has violated a material term of a tenancy agreement; as authorized by the Director.. None of these circumstances apply to this case.

The tenant EI acknowledged in the condition inspection report on moving out that the tenants owed the landlord outstanding rent of \$772.50 for the month of March 2018, the last month the tenants occupied the unit.

Considering the uncontradicted evidence of the landlord, the evidence submitted, and the burden of proof required, I find on a balance of probabilities that the landlord has established a claim against the tenants for the amount owing for rent. I therefore find the landlord is entitled to a monetary award for outstanding rent in the amount of \$772.50.

Cleaning costs

Under section 37(2) of the *Act*, the tenants must leave a rental unit *reasonably clean*.

The tenants acknowledged in the condition inspection report on moving out that they owed the landlord \$445.00 for estimated cleaning costs. The landlord submitted photographs of the unit and a subsequent cleaning invoice in the reduced amount of \$283.50.

In consideration of the uncontradicted evidence of the landlord, the evidence submitted, and the burden of proof required, I find on a balance of probabilities that the landlord has established the tenants did not leave the unit reasonably clean. I accept the landlord's evidence which is supported by photographs that the unit needed cleaning when the tenants left. I accept the amount requested as compensation for the cleaning expenses to be have been incurred by the landlord. I therefore find the landlord is entitled to a monetary award against the tenants in the amount of \$283.50.

Liquidated Damages

The landlord claims liquidated damages of half of one month's rent, pursuant to a term of the tenancy agreement. The tenant EI acknowledged in the condition inspection report on moving out that the tenants owed the landlord \$1,495.00 for liquidated damages. The landlord now seeks a monetary order against the tenants for half that amount, \$747.50.

The landlord testified that one of the ads for the unit was \$756.00. In addition, the property manager (agent of the landlord at the hearing) testified to her time and efforts to find substitute tenants through answering enquiries, showing the unit to prospective tenants, and providing administrative support.

A liquidated damages clause is a clause in a tenancy agreement in which the parties agree in advance to the amount of the damages payable in the event of a breach of the

tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is made. Otherwise, the clause may be held to constitute a penalty and as a result, is unenforceable.

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting a unit after the tenants' breach.

The cost of re-renting a unit to a new tenant is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental. For that reason, I find there is a loss to the landlord associated with the tenants' breach.

The next question is whether the \$747.50 amount specified by the landlord (being one-half the amount set out in the tenancy agreement) meets the test of being a genuine pre-estimate of that loss.

The landlord stated that the liquidated damages are to cover administrative costs of the rental advertisement in several local newspapers and websites, to answer phone calls about the unit, and to show the unit to potential tenants.

The tenants breached the fixed term tenancy agreement and signed the tenancy agreement. Clause 4 of the tenancy agreement discusses liquidated damages, stating that the tenants are responsible for this cost. Considering the uncontradicted evidence of the landlord, the evidence submitted, and the burden of proof required, I find on a balance of probabilities that the landlord has established a claim against the tenants for the liquidated damages as a genuine pre-estimate of the costs of re-rental of the unit. Accordingly, I find that the landlord is entitled to a monetary award against the tenants in the amount of \$747.50 for liquidated damages.

Filing Fee

As the landlord was successful in her application, she may recover the filing fee pursuant to section 72 of the *Act*.

Offsetting

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit, in partial satisfaction of the monetary award.

Summary

I grant the landlord a monetary order in the amount of **\$1081.00** calculated as follows:

ITEM	AMOUNT
Outstanding rent (half of the rent owing for March 2018)	\$772.50
Liquidated damages (one-half month's rent)	\$747.50
Cleaning	\$283.50
Fob/Key replacement	\$75.00
Filing fee	\$100.00
(Less deposits) (calculation above)	(\$897.50)
BALANCE OWING BY TENANTS	\$1081.00

Conclusion

I grant the landlord a monetary order of **\$1081.00** against the tenants. The tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 24, 2018

Residential Tenancy Branch